

Women and Reparations

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Abstract

Reparations for victims of gross human rights violations are becoming an increasingly acknowledged feature in post-authoritarian and post-conflict societies coping with the legacy of a violent past. Despite some recent progress much more work needs to be done for massive reparations programs to respond better to the needs of women. This article, resting as it does on a comprehensive conception of reparations, outlines both the procedural and substantive components of reparations programs necessary for the programs to fulfill the goal of providing (partial) justice to women.

Introduction

Reparations for victims of gross human rights violations are becoming an increasingly acknowledged feature in post-authoritarian and post-conflict societies coping with the legacy of a violent past. This trend is confirmed by the recommendations of several truth commissions and by the jurisprudence of both national and international human right bodies, including the European and the Inter-American Courts of Human Rights. National governments, such as those of Argentina, Chile, Brazil and South Africa, have adopted reparations initiatives as a transitional justice measure.¹ This broadening of the focus of justice initiatives shift of focus from the prosecutorial domain, with its emphasis on punishing perpetrators, to the inclusion of a reparative instance, with its emphasis on giving victims adequate recognition and redress, has been endorsed by the United Nations in, among other documents, its *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the General Assembly in 2005.²

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¹ See for example the case studies in, Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006).

² *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147 (21 March 2006) [hereafter, 'Basic Principles']. See also, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, UN Doc. S/2004/616 (3 August 2004); *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005) [hereafter, 'Updated Principles to Combat Impunity']; *Independent Study on Best Practices*,

Increasingly, then, the conviction is that doing justice in transitional scenarios requires not only doing something against perpetrators but also doing something specifically for victims.

There is an increasing focus at an international level on the need to render women's experiences of conflict and authoritarianism visible. UN Security Council Resolution 1325 on Women, Peace and Security recognizes the impact of armed conflict on women and girls, the role of women in peacebuilding, and the gender dimensions of peace processes and conflict resolution.³ The serious and pervasive nature of gender-based violence in conflict, particularly sexual and reproductive violence, has finally gained due recognition under international criminal law. This is evidenced in the Rome Statute of the International Criminal Court, which adopts '[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity' as part of its definition of crimes against humanity and war crimes.⁴

The inroads into international criminal law by feminist theory have been accompanied by discussions on how other transitional justice mechanisms can be rendered gender sensitive.⁵ There is, for instance, an increasing interest in how to make truth-telling mechanisms sensitive to the specific needs and concerns of women.⁶ Thus, it comes as no surprise that there is now a growing sense of the necessity of 'engendering' reparations. The reparations program recommended in the final report of the Truth, Reception and Reconciliation Commission in Timor Leste (CAVR) lists gender equity as one of five guiding principles that inspires its overall conception.⁷ Morocco's Equity and Truth Commission (IER) made gender

Including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat all Aspects of Impunity, UN Doc. E/CN.4/2004/88 (27 February 2004); *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, UN Doc. E/CN.4/2005/102 (18 February 2005).

³ United Nations Security Council Resolution 1325 on Women, Peace and Security, UN Doc. S/RES/1325 (2000).

⁴ *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9 (17 July 1998), parts 7 and 8.

⁵ Of course, 'gender' need not refer to women alone. Given present conditions however, concerns about gender and gender sensitivity in this and most contexts in which justice issues arise refer to the disparities and inequities in access, power, opportunities and rights experienced by women across a wide range of spheres. We will follow this well-established use of the term gender in this article, signaling that gender analysis at some point will also have to include a more serious and systematic treatment of how gender roles may also render access of men to some forms of reparation difficult.

⁶ Debra L. DeLaet, 'Gender Justice: A Gendered Assessment of Truth-telling Mechanisms,' in *Telling the Truths: Truth Telling and Peace Building in Post-conflict Societies*, ed. Tristan Anne Borer (Notre Dame: University of Notre Dame Press, 2006); The World Bank, *Gender, Justice, and Truth Commissions* (June 2006); Vasuki Nesiah et al., *Truth Commissions and Gender: Principle, Policies and Procedures* (International Center for Transitional Justice: New York, 2006); Fionnula Ni Aoláin and Catherine Turner, 'Gender, Truth and Transition,' *UCLA Women's Law Journal* 16 (2007): 229–279.

⁷ Galuh Wandita et al., 'Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims,' in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006).

mainstreaming one of the priorities in its reparations policy.⁸ In addition, Colombia's current Commission on Reparations and Reconciliation (CNRR) has established a specific unit to ensure that all policies and recommendations of the Commission take into account the specific needs of women and other marginalized groups.

This said, defining what exactly the task of bringing gender justice to the discussion of reparations entails has to date received less attention than the question of what engendering truth-telling or prosecutions requires. A consensus is emerging that sexual violence against women must be included among the crimes that require reparations. Little reflection has been given, however, to how precisely to do this and, more broadly, how to ensure that the procedures chosen render reparations accessible to women or that the benefits are suited to women's specific needs and to empowering women, however minimally, in the process.⁹

We have found that in order to clarify and meet the different challenges that designing and implementing reparations programs pose, it is useful to think of reparations programs, at the most abstract level, as instances of a relationship in which links are established between members of a set defined as 'victims' (at least for the purposes of the program) and members of a set defined as 'beneficiaries.' In this relationship, the links take the form, precisely, of the benefits distributed by the program. The ideal behind a reparations program, then, is to ensure at least that every victim is a beneficiary, meaning that he or she receives something from the program.¹⁰

In this article, we suggest how reparations programs can be made more sensitive to women both procedurally and substantively. Where possible, we make reference to best practices in this domain. In the first section, we focus on the procedural dimensions of reparations, while in the second and third sections, we examine substantive aspects. More specifically, the second section looks at how to bring

⁸ See the website of the Instance Équité et Réconciliation (IER) at, <http://www.ier.ma>. Both authors provided technical advice to the IER on reparations, including on its gender dimensions.

⁹ See, Ruth Rubio-Marín, 'The Gender of Reparations: Setting the Agenda' in Rubio-Marín, supra n 7. In view of this vacuum, the International Center for Transitional Justice (ICTJ) embarked in 2005 on a two-year research project on gender and reparations. The first results of the project were compiled in a book providing a gendered analysis of reparations discussions, initiatives and programs in Timor Leste, Guatemala, Peru, South Africa, Rwanda and Sierra Leone. See, Rubio-Marín, supra n 7. A book that compiles a series of thematic and cross-country studies with the remaining research results will follow.

¹⁰ This is nothing more than a heuristic. On one hand, the ideal is indeed more demanding than this suggests, for reparations programs usually provide benefits to a set of people larger than the set of victims (think about unharmed family members who nevertheless, rightly, receive reparations). On the other hand, programs usually fail to provide benefits to all victims (think not just of the many victims of violations of the type of rights that are frequently violated in situations of conflict or authoritarianism but that have never been triggers of reparations through a program, but also of the many people who are victims of the very violations that the program is supposed to provide benefits for but who never receive any). To use the vocabulary that one of the authors of this paper developed for the forthcoming Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Reparations Program* (forthcoming), which deals with reparations, the former is a problem of lack of 'comprehensiveness' in the reparations program, while the latter is a problem of 'incompleteness.'

gender justice considerations into the categories of 'victims' and 'beneficiaries' in reparations programs.¹¹ The third section does the same, focusing on how the design of reparations 'benefits' would be changed by considerations of gender justice. The article thus tracks the basic structure of reparations programs as described above.

Gender and the Reparations Process

Reparations are rights-based claims. Although the contours of the individual right to reparation under international law remain unclear, the evolution of this right has been increasingly encouraging. We will not review the grounding in international law for the right to reparations, but rather take it, as the *Basic Principles* assert, that such a right exists but that its implementation and corresponding duties are in essence a matter of domestic law and policy. In this respect, national governments possess a good deal of discretion and flexibility in meeting the obligation to provide effective remedies and in giving substance to the right to reparation. The question of whether, in discharging its obligation to provide reparations, the state should favor judicial mechanisms that allow it to assess violations on a case-by-case basis and decide compensation in strict proportion to harm, or whether it should privilege large-scale legislative and administrative programs that aim to provide reparations to a wide pool of victims of different types of violations can only be answered in a context-sensitive manner.¹²

Elsewhere, we have defended the view that, in general, in situations of large-scale violence and repression, reparations are best conceptualized as rights-based political projects aimed at giving victims due recognition and at enhancing civic trust both among citizens and between citizens and state institutions.¹³ Judicial reparations procedures, which typically operate on a case-by-case basis and which individualize compensation measures so as to recompense victims in proportion to the harm suffered, play a valuable role in discussions about reparations even in contexts of mass violence. They catalyze the willingness of otherwise reticent local governments to establish massive reparations programs.¹⁴ However, when reparations are owed to a large universe of victims as a result of widespread and systematic violence, administrative (out-of-court) programs arguably are better suited to the task, and not just for reasons of expediency. An important reason to favor massive programs is that in compensating everyone within the same category of

¹¹ By gender justice we mean efforts to remove the inequities in access, power, opportunities and rights suffered by women by virtue of their gender.

¹² For a discussion of the topic see, Jaime E. Malamud-Goti and Lucas Sebastián Grosman, 'Reparations and Civil Litigation: Compensation for Human Rights Law and Practice to Repairing the Past,' in de Greiff, supra n 1 at 539–560.

¹³ Pablo de Greiff, 'Justice and Reparations,' in de Greiff, supra n 1; Ruth Rubio-Marín, 'Gender and Collective Reparations in the Aftermath of Conflict and Political Repression,' in *The Politics of Reconciliation in Multicultural Societies*, ed. Will Kymlicka and Bashir Bashir (Oxford: Oxford University Press, forthcoming).

¹⁴ Cases in front of the Inter-American system, for example, played that role in Argentina and continue to exert that type of pressure in Peru and Guatemala.

violation in roughly the same way, they avoid a potentially inegalitarian message and consequent divisions among victims. In providing redress for the violation of rights rather than compensating the loss of wealth, they also demonstrate their nature as rights-promoting and rights-enhancing measures.¹⁵ We will highlight three gender justice-related reasons why administrative reparations programs might be preferable to judicial venues, or at least a commendable supplement for them.

Reaching the Women

Some theorists argue that reparations programs obviate certain difficulties and costs associated with litigation; including high expenses, the need to gather potentially unavailable evidence, the pain associated with cross-examination and victims' lack of confidence in judicial systems still untransformed by political transition.¹⁶ If this is true in general for all victims, we see good reason to think that these considerations may be particularly true for women, and especially for some victims who are more likely to be female than male, such as the victims of sexual violence. Overrepresented among the poor, the illiterate and those with little information, and overburdened with family-related obligations that make traveling large distances a difficult task, women may find it particularly hard to access the court system. Also, the significant underreporting of sexual violence even in 'normal times' speaks specifically to the difficulty women in many societies have in coming forward as victims of sexual violence and then in making use of criminal processes that may result in further victimization. A well-designed administrative program will mitigate some of these difficulties by, among other things, simplifying procedures, lowering thresholds of evidence and sparing victims the pain of cross-examination.

The procedural obstacles that victims of sexual violence have encountered historically in the judicial venue, which increase the possibility that they will experience re-victimization or be exposed to reprisal, stigma and communal and family ostracism, deserve special examination. Crucial here are both the evidentiary standards characteristic of judicial procedures and the degree of publicity or confidentiality held throughout the process. In the case of a judicial claim of civil damages linked to a criminal process, standards of evidence and of confidentiality

¹⁵ For an elaboration of the reasons why reparations programs may be a better response than individual case-by-case judicial procedures in transitional contexts, see, Pablo de Greiff, 'Justice and Reparations,' in de Greiff, *supra* n 1; Pablo de Greiff and Marieke Wierda, 'The Trust Fund for Victims of the International Criminal Court: Between Possibilities and Constraints,' in *Out of the Ashes: Reparations for Victims of Gross and Systematic Human Rights Violations*, ed. Koen de Feyter et al. (Antwerp: Intersentia, 2006); Debra Satz, 'Countering the Wrongs of the Past: the Role of Compensation,' in *Reparations: Interdisciplinary Inquiries*, ed. Jon Miller and Rahul Kumar (New York: Oxford University Press, 2007); Naomi Roht-Arriaza, 'Reparations in the Aftermath of Repression and Mass Violence,' in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004).

¹⁶ See, de Greiff, *supra* n 1; Heidy Rombouts et al., 'The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights' in de Feyter et al., *supra* n 15 at 488.

or publicity cannot be easily adjusted to make them sensitive to victims' needs because the due process rights of alleged perpetrators must be respected. By contrast, at least in part because perpetrators have nothing at stake in administrative programs, reparations programs can ensure that both rules of evidence and publicity/confidentiality rules are primarily victim-centered. Regarding sexual violence, this could go as far as assuming the veracity of victims' testimony and/or relying on a system of presumptions based on patterns of criminal conduct, as some programs have done.¹⁷

Ensuring the confidentiality of victims in a reparations program is of course significantly easier than in a judicial proceeding that has requirements of publicity. While programs need to satisfy criteria of transparency, their underlying procedures do not require public exposure, so victims can always give testimony or provide evidence in private, at a distance or through proxy. Furthermore, administrative programs may articulate categories of beneficiaries creatively so as to cover victims of sexual violence even if they do not come forward as such.¹⁸

Another way in which an administrative approach may hold advantage for women over judicial proceedings is in terms of timing. Judicial proceedings have less flexibility with timing, as they must meet procedural requirements such as the availability of evidence and, ultimately, the need for achieving legal certainty. Administrative reparations programs have not always been sensitive to the fact that in the immediate aftermath of conflict, for both objective and subjective reasons, women may not be ready to even try to access reparations benefits because of having suffered violations, including sexual violence. There is nothing, in principle, to prevent programs from improving on this score. Narrow applications deadlines – a frequent complaint against reparations programs in many parts of the world, including South Africa, Morocco and Brazil¹⁹ – or closed-list systems may not allow different victims to come forward and claim reparations when they feel psychologically prepared to do so. More recent reparations initiatives, such as those recommended by Sierra Leone's Truth and Reconciliation Commission (SLTRC), Timor Leste's CAVR

¹⁷ The Commission on Illegal Detention and Torture in Chile, based on close studies of the modus operandi of different detention centers, presumed that whoever was shown to have spent time in certain detention centers had been tortured and therefore deserved compensation. Sexual violence, of course, calls for equally creative evidentiary procedures. In many cases, there will be a pattern of sexual torture in abuse in detention centers. Other patterns can also be context-specific, as the systematic mass rape of women and girls by the army before massacres in Guatemala shows. See, Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations,' in Rubio-Marín, *supra* n 7.

¹⁸ For instance, the CAVR recommended providing benefits to single mothers affected by the conflict, a category that covered mothers who were not legally married when their children were born, including both women whose partners were killed or disappeared and victims of sexual violence who bore children out of rape. This was an attempt to provide some confidentiality for the latter. See, Wandita et al., *supra* n 7.

¹⁹ Some countries, including Brazil, have introduced legislation that extends application periods. See, Ignacio Cano and Patricia Galvão Ferreira, 'The Reparations Program in Brazil,' in de Greiff, *supra* n 1.

and Peru's TRC, have left the list of victims open and/or disconnected victims' participation in the truth commission statement-taking process from the process of reparations.²⁰

The Involvement of Women as a Reparative Process

An additional advantage of conceptualizing reparations as a (rights-based) political process that contributes to the (re-)establishment of a system of rights is that, if victims are adequately involved in the process, their involvement not only can provide information that is needed for the proper design of such a program but may also have a reparative effect in itself. If this is true for victims in general, it may be even more so for women, given the obstacles in many societies posed to women's participation in the public arena. In contrast, the strictures of the judicial procedure set great limits on the participation of victims, no matter how victim-friendly the process is intended to be.

A consensus is emerging that, in order to be legitimate, reparations policies must be shaped with the participation of victims, victims' groups, and other relevant actors in civil society. Whereas women have been known to play a fundamental role during periods of violence and their aftermath, working to sustain and reconstitute families and communities, demanding justice for their loved ones and trying to return to normal life, women's groups have not been particularly engaged in discussions of reparations. This used to be the domain of victims' groups and human rights' groups, but recent reparations discussions have included not only groups and associations that represent a narrow set of women's issues, such as widows' associations, but also groups working on women's rights more broadly.²¹ This can have an important effect, for instance, by incorporating the views of victims of sexual violence, who in many contexts and for obvious reasons are unlikely to mobilize publicly as such. Conceived as a space for the participation of victims, the design and implementation of an administrative reparations program can, in itself, be a project that offers women a reparative sense of recognition both as victims and as valuable agents of political and social transformation.²²

²⁰ The SLTRC did not limit the victims and potential beneficiaries of the recommended reparations program to those who participated in the Commission, recommending that the list be left open. Similarly, the CAVR recommended leaving a two-year period to identify other potential beneficiaries besides those that had come before the Commission. See, Rubio-Marín, *supra* n 7.

²¹ In the past, women's agency in reparations discussions has been mostly conducted either through their involvement in victims' groups (in which they often participate as family members of the disappeared or killed) or through specific associations representing some partial interest (such as widows' associations or associations focusing on the displaced). Only recently can we find instances, such as Sierra Leone, where women's participation in reparations discussions includes the involvement, however limited, of women's groups as such (through the Women's Task Force). In Colombia, this trend has clearly consolidated and women's groups are among the most active in the peace, reconciliation and reparations discussions. See the case studies on South Africa, Guatemala and Sierra Leone in Rubio-Marín, *supra* n 7.

²² This idea receives further elaboration in Rubio-Marín, *supra* n 13.

Reparations as (Modest) Paths to Transformation

Judicial damages are typically awarded according to a rather narrow and strict set of criteria. These criteria aim to revert the victim to the *status quo ante* (the status prior to the violation) or, alternatively, to compensate her in proportion to the harm or loss endured through the violation. One of the problems of conceptualizing reparations primarily as actions to restore the *status quo ante* is that prior to the violence or abuse, the victim often suffered all sorts of disadvantages, such as in the holding and exercise of rights. Even if the measures do not simply try to restore that status but attempt to compensate for losses, the very evaluation of the losses is affected by the unequal starting point.

In contrast, when reparations are thought of as part of a political project of (re)creating a more legitimate, democratic and inclusive political order, rather than of reverting to a broken past, they open a window of opportunity – even if small – for women to endorse forms of reparations that depart from settled practices and norms that are so frequently part of pre-existing gender hierarchies. Reparations programs need not conform to or contribute to the entrenchment of pre-existing patterns of female land tenure, education or employment. In theory, judges have some room to craft reparations benefits creatively, but they tend to think about the task in ways that reaffirm rather than transform normative expectations. A positive step was taken by Morocco's IER, which apportioned benefits among family members of deceased victims in a way that departed from the *sharia*-based law of inheritance, giving a larger share to women rather than everything to the eldest son. As an administrative scheme, this is something the IER could easily do, and it is a small but significant example of the transformative potential of reparations programs.

Gender and Reparations Programs: Victims and Beneficiaries

Having covered some of the procedural aspects of what engendering reparations programs may entail, we will concentrate on substantive issues, organizing our article by means of the conception of reparations as a relationship between three terms, namely, 'victims,' 'beneficiaries' and 'benefits.' We will pay particular attention to the difference that it would make to approach the basic challenges faced by all reparations programs – namely, how to define victims and beneficiaries²³ and how to craft benefits – from a perspective sensitive to the needs of women.

Currently, the real challenge generated by the notion of victim, given developments in international law, is not so much in the choice of a general definition. The UN's *Basic Principles* offers a general definition of 'victim' that has

²³ The definition of beneficiary can serve several purposes, including deciding who is to access reparations benefits if the victim is no longer alive; expanding the notion of victim to cover those family members who were harmed through the violation of the primary victim; or prioritizing some victims over others for the purpose of allocating benefits according to some additional criteria, such as need or vulnerability.

been adopted by some national reparations programs. According to the *Basic Principles*:

Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.²⁴

The fundamental question put forward by all reparations programs is how to select the rights whose violation will trigger access to benefits and how to delineate the circle of those who qualify as beneficiaries. In order for a reparations program to satisfy the ideal of at least making sure that every victim is a beneficiary, it would have to extend benefits to victims of the same broad range of violations that may have taken place during a conflict or repression.²⁵ No program has achieved this type of comprehensiveness. Most have provided reparations for a rather limited and traditional list of rights; concentrating heavily on the more fundamental civil and political rights and leaving the violations of other rights largely unaddressed. The decision about which rights to include as triggers for a reparations policy is one that obviously rests upon certain presuppositions about gender, and which at the same time has significant gender impact. Similarly, the way in which the definitions extend the scope of the programs, mainly by their understanding of who, exactly, 'suffered harm' through the violations and who is or is not a part of the category of 'immediate family or dependants,' deserves close gender-based scrutiny.

Victims: Engendering Political Violence

While it makes sense, particularly under conditions of scarcity, to concentrate on what are perceived to be the worst forms of abuse, no program to date has articulated the principles underlying its choice to provide benefits for the violation of some rights and not others. One of the predictable consequences of this omission is that violations that affect mainly or predominantly marginalized groups have rarely led to reparations benefits, which has had a nefarious effect on the way that women have experienced these programs.²⁶ The fairly limited but also traditionally conceived catalog of violations of civil and political rights on which reparations programs have concentrated (including illegal detention, summary execution or forced disappearances) covers mostly those violations that are taken as

²⁴ *Basic Principles*, supra n 2 at 5. This definition has been replicated by Sierra Leone's TRC, for example.

²⁵ Office of the United Nations High Commissioner for Human Rights, supra n 10.

²⁶ See, Rubio-Marín, 'Gender and Reparations in Transitional Societies,' in *The Gender of Reparations*, ed. Ruth Rubio-Marín (forthcoming 2007).

paradigmatic expressions of political violence. Not surprisingly, these are the violations that in many scenarios disproportionately target men. Left out are those violations more commonly perpetrated against girls and women (but also boys), including: different forms of sexual violence, including rape, sexual abuse, sexual exploitation and enslavement, forced nudity and so on; forms of reproductive violence, such as forced abortions, sterilization or impregnations; and domestic enslavement, forced 'marital' unions, forced displacement, abduction and forced recruitment.

Recently, reparations programs have included sexual violence in the list of crimes that trigger reparations, suggesting progress in the field. The inclusion of this violation in cases such as Guatemala, Peru, Sierra Leone and Timor Leste constitutes a significant victory, especially in light of the traditional neglect of sexual violence. The explicit incorporation of sexual violence as a separate category has also had some constraining effects, especially when the category chosen does not cover the most common or the most egregious forms of sexual violence. For example, Peru's explicit mention of rape as a crime category that triggers reparations has given some visibility to sexual violence, but it leaves out many other forms of sexual and reproductive violence that women suffered during the conflict, including forced abortion, forced cohabitation, forced contraception, sexual slavery, sexual molestation and sexual mutilation.²⁷ The contrast with South Africa is interesting for although sexual violence was not on the list of violations covered by South Africa's TRC, several forms of sexual and reproductive violence fell under the Commission's understanding of 'torture' and 'severe ill treatment,' including assault to genitals and breasts, rape, beatings leading to miscarriage and sexual abuse.²⁸ Guatemala's proposed – but only incipiently implemented – national reparations program refers not only to rape but also to sexual violence more broadly. Sierra Leone's and Timor Leste's recommended programs also refer to victims of sexual violence, giving this category a broad interpretation and confirming an expansive evolution.²⁹ In any event, in addition to ensuring that the definition of sexual violence is broad enough to reflect the different forms of sexual abuse perpetrated against women and children, reparation programs should

²⁷ The category that Peru's TRC refers to is 'rape victims.' See, Julie Guillerot, 'Linking Gender and Reparations in Peru: A Failed Opportunity,' in Rubio-Marín, *supra* n 7.

²⁸ See, Beth Goldblatt, 'Evaluating the Gender Contents of Reparations: Lessons from South Africa,' in Rubio-Marín, *supra* n 7 at 63. Although this option does entail less recognition of sexual violence as a systematic practice, it allows for the inclusion of practices that are often left out under the commonly embraced narrower definitions of sexual violence, which in turn allows victims of sexual violence to receive the same compensation as victims of other forms of torture.

²⁹ Guatemala's PNR refers to 'rape and sexual violence,' although the latter is not interpreted as including sexual slavery, forced union with captors, sexual torture or amputation and mutilation of sexual organs. The reparations programs recommended by the SLTRC referred to victims of 'sexual violence,' including women and girls subjected to rape, sexual slavery, mutilation of genital parts or breasts and forced marriage. The urgent reparations delivered by the CAVR included reparations for victims of sexual violence. The final reparations recommended by the same Commission also refer to victims of 'sexual violence' in similarly broad terms, including rape, sexual slavery and forced marriage among other forms of sexual violence. See, Rubio-Marín, *supra* n 7.

include those forms perpetrated by both state and non-state actors, such as subversive groups or civilian self-defense forces.³⁰

No reparations program thus far has distributed benefits explicitly for forms of reproductive violence, such as forced impregnation, forced abortion or forced sterilization. Clearly, this has a bearing on the extent to which such forms of gender-based violence are given recognition and visibility. Arguably, because the loss of a pregnancy, the loss of reproductive capacity, an imposed pregnancy or the imposition of an unwanted child give rise to specific and long-term harms, conceptualizing them separately as forms of reproductive violence rather than lumping them into a broader category such as 'sexual violence' increases the incentive to respond with proper reparations. Although the explicit inclusion of sexual violence in reparations programs is a victory against a tradition that minimizes its importance as 'collateral,' private or non-political damage, it runs the risk of sexualizing women unless it is accompanied by a serious effort to encompass other forms of victimization that also have a disparate impact on women. Forced domestic labor, for instance, a practice that affects girls and women predominantly, has rarely been the object of reparations.

However, a price is always paid for comprehensiveness. Under conditions of limited resources, choosing an extensive list of rights whose violation triggers reparations benefits will inevitably lead to the dilution of benefits. On the other hand, a reparations project inspired by a desire to give victims due recognition as equal citizens cannot leave out entire groups, such as victimized women, by endorsing a male-shaped vision of the experience of political violence. Instead, it should find creative ways of combining different types of benefits, material and symbolic, individual and collective, to avoid giving rise to comparative grievances.

Beneficiaries: Rights versus Harms

If we take a close look at the definition of victim endorsed by the *Basic Principles*, we realize it implies that the violation of a right is a pre-condition for the right to reparation. This conceptualization does not leave out altogether the notion of harm: victims are not only the persons whose rights are violated but also other individuals affected by the violation, such as their close family members and dependents.

A rights-based conception of reparations need not be blind to the notion of harm. On one hand, the right to reparations is not grounded in the harm, for even in the unlikely case that the violation of a fundamental right did not generate a harm, the violation would be sufficient grounds for a right to reparation. On the other hand, precisely because rights are legal instruments designed to protect fundamental interests and needs, their violation can be said to inevitably cause a

³⁰ The recommendations of Peru's TRC (unfortunately unheeded) provide an interesting example because they cover victims of acts committed by both state agents and insurgent groups. Insurgent groups were primarily responsible for sexual and reproductive crimes other than rape that were not included in the program. See, Guillerot, *supra* n 27.

harm, if not to the individual then to a system that tries to guarantee and protect fundamental needs and interests. Furthermore, harm figures in a conception of reparations that is rights-based, for what is important in the end for a system of rights is not the protection of the integrity of norms but the protection of the integrity of persons. As we have argued elsewhere, this notion of victim that links rights and harms frames some of the challenges and opportunities that reparations present for women.³¹ Even when reparations initiatives focus on a narrow set of civil and political rights, the notion of harm allows initiatives to go beyond the right-holder and incorporate both the social tissue and the relationships disrupted by violations, especially in a family context.

Although harms (or more precisely, their prevention) do not play the fundamental justificatory role in a rights-based conception of reparations, consideration of harms can be used 'externally' for different purposes. These might include adjusting responses to rights violations (i.e., helping shape the benefits offered to redress the violation of the right and the ensuing harms) and prioritizing victims according to the severity of the harm endured, particularly in contexts in which not all victims can be redressed simultaneously for reasons of scarcity. Both the harms-based expansion of beneficiaries and the prioritization of victims and beneficiaries according to harm can have important consequences for women.

Whether they identify persons affected by conflict as victims (sometimes called 'secondary' or 'indirect')³² or simply as beneficiaries, many reparations programs, like those in Chile, Argentina or Brazil, have decided that family members should receive reparations benefits in cases of death or disappearance.³³ This extension of the definitions is welcome because all violations (including illegal detention or imprisonment, summary executions and disappearances) committed against men have a tremendous impact on women in societies organized around the family unit. It is women who are often left as destitute, with increased family responsibilities and limited options for finding alternative means of livelihood. Unfortunately, the inclusion of family members is contingent on the death or

³¹ Rubio-Marín, *supra* n 7.

³² Although the Act governing the South African TRC defined victims as including relatives or dependents of victims and did not distinguish between primary and secondary victims, the Reparation and Rehabilitation Committee of the TRC did make that distinction. See, Goldblatt, *supra* n 28. The concept of indirect victims was also used by Peru's TRC and in Peru's reparations program. See, Guillerot, *supra* n 27. The nominal distinction between primary and secondary victims has been criticized from a feminist perspective for its potential to symbolically reproduce a gendered hierarchy of harms whereby those endured by men (who are more often victims of those violations that have traditionally been included in reparations programs) are perceived as primary and those that ensue for women as marginal or secondary.

³³ In Chile, pensions were granted to the children, spouse and parents of the disappeared, educational benefits were granted to the children of the disappeared and comprehensive health care was granted to family members of the disappeared, executed, returned exiles and victims of torture. See, Elizabeth Lira, 'The Reparations Policy for Human Rights Violations in Chile,' in de Greiff, *supra* n 1. In Brazil, lump-sum compensation was given to relatives of victims of political assassination and disappearance. See, Cano and Galvao Ferreira, *supra* n 19. Finally, Argentina gave pensions to spouses and children of disappeared persons as well as compensation payments to family members of victims of forced disappearances and assassinations. See, María José Gueembe, 'Economic Reparations for Grave Human Rights Violations: The Argentinean Experience,' in de Greiff, *supra* n 1.

disappearance of the primary victim and this does not adequately render visible the harming effects of violence on the spouse, parents or descendants of survivors of rape, torture or illegal imprisonment.³⁴ Given the common problem of resource scarcity, sharing the reparations award for all or most kinds of violations among spouses or partners (apportioning) may be more feasible than simply multiplying the benefits. No reparations program has done either to date; the apportioning of pensions and lump-sum payments to family members has only taken place when the victim was dead or missing.³⁵ The closest we have come to an alternative approach is including family members of surviving victims among the potential recipients of services, especially medical services, which is becoming the norm in practice (as in Chile) and in recommendations (as in Morocco and Sierra Leone).³⁶

Beyond including close family members as victims or beneficiaries, reparations programs can be sensitive to harms if they rely on assessment of harms to prioritize among the most vulnerable victims.³⁷ For instance, the reparations program recommended by the TRC in Sierra Leone reserves physical and mental healthcare, pensions and the provision of education, skills training and microcredit/microprojects for special categories of vulnerable victims, such as amputees, other war wounded, children, victims of sexual violence and war widows.³⁸ Given that women experience high levels of violence and marginalization before, during and after a conflict or repressive period, it is not surprising that a large number of the prioritized are women, or at least some groups of women, such as widows or victims of sexual violence. In situations of deep scarcity, the furthering of gender justice may necessitate this kind of prioritization among beneficiaries.

Gender and Reparations Programs: Benefits

The basic distinction in the benefits distributed by reparations programs is between material and symbolic benefits of either an individual or a collective

³⁴ That family members actually become beneficiaries only upon the death of the main victim (regardless of their having been categorized by the programs as 'victims' as well) is largely true in South Africa, Peru and Guatemala. See, Goldblatt, *supra* n 28; Guillerot, *supra* n 27; and Paz y Paz Bailey, *supra* n 17.

³⁵ In Chile, for instance, the surviving spouse received 40 percent of the benchmark figure of a \$537 pension; the mother, or in her absence the father, received 30 percent; the surviving mother or father of a victim's out-of-wedlock offspring received 15 percent; and each of the children of a disappeared person received 15 percent until the age of 25, or with no age limit in the case of handicapped children. See, Corporación Nacional de Reparación y Reconciliación, *Informe Final de la Corporación Nacional de Reparación y Reconciliación* (Santiago, 1996). See also the website of the Human Rights Program of the Ministry of Interior at http://www.ddhh.gov.cl/DDHH_informes_cnrr.html.

³⁶ The SLTRC recommended healthcare and psychological support for immediate family members of amputees, victims of sexual violence and other war wounded. See, Jamesina King, 'Gender and Reparations in Sierra Leone: The Wounds of War Remain Open,' in Rubio-Marín, *supra* n 7.

³⁷ Doing so does not necessarily compromise the goal of comprehensiveness because such a goal requires that every victim be a beneficiary but does not require that all victims receive the same kind of benefits, or that they receive them at the same time.

³⁸ See, King, *supra* n 36. The CAVR similarly took vulnerability as a criterion of prioritization. See, Wandita et al., *supra* n 7.

nature. Material reparations can take different forms, including compensation and restitution of material goods and access to services such as education, health-care and other measures necessary for the rehabilitation of victims. Symbolic reparations may include official apologies, changes in names of public spaces and the establishment of dates and places of commemoration. Reparations programs can be simple, providing only monetary compensation, or they can be highly complex, offering access to services and social support and individual and collective symbolic measures.

In general, since there are certain things money cannot buy (and for which there is no money), complexity brings with it the possibility of providing benefits to a larger number of victims and of targeting benefits flexibly so as to respond to a variety of victims' needs. Moreover, the complexity of a reparations program that not only aims to provide compensation and restitution but is also inspired by other ends – such as rehabilitation, satisfaction and even non-repetition – opens up the possibility of using reparations to advance 'transformative' remedies, including those that depart from established (and gendered) norms. For our purposes, transformative remedies, unlike affirmative remedies, seek the subversion of a pre-existing order characterized by the hierarchical subordination of women.³⁹ We will now examine how material and symbolic benefits, both individually and collectively distributed, can be made to respond to women's needs more effectively.

Women and Material Reparation: Compensation, Rehabilitation and Recognition

A reparations program must be clear about its underlying goals when the allocation of reparations resources is decided. Here, we would like to subject to scrutiny three different goals in the distribution of material reparations. Since the choices concerning these goals are not gender neutral, it is worth pausing over this issue. One possible goal of the program is to make victims whole, to restore them to the *status quo ante* by compensating them for and in proportion to the harm they incurred. A second possible goal, which focuses on the symbolic dimension of material measures, is to use monetary awards as token signs of recognition of victims as rights-holders and equal citizens. Third, the purpose of material reparation can be to rehabilitate victims, to improve their quality of life or, at the least, to optimize their chances of recovering a minimally functional life. Each of these goals offers different opportunities and presents different challenges for female victims.

The most limited option, for at least two reasons, may be compensating women in proportion to harm and as a way of reverting them to their status prior to the violation. One reason is that in many societies women do not enjoy the same legal status or opportunities as men. The other is that those opportunities that women enjoy or rely upon are commonly undervalued or neglected. The example of a

³⁹ This difference is explored at greater length in Rubio-Marín, *supra* n 26.

reparations scheme that prioritizes restitution or compensation for lost land or property in societies that do not give women the same right to ownership and inheritance illustrates the first shortcoming. An example of the second shortcoming is a compensation model that addresses loss of income potential and privileges education and employment as sources of income even in societies where women rely on other forms of livelihood and opportunities.

One comparative advantage of the idea of material reparations, as a material expression of the recognition owed to victims and the commitment of the successor government to respect the equal rights of all persons, is that the amount of compensation owed in fairness to victims is based directly on the violation of rights held in common by citizens and not on each individual's particular position prior to the violation. Given the uneven distribution of resources, entitlements and opportunities between the sexes in virtually all societies, the fact that this way of conceptualizing reparations leads to equal benefits within the same categories of violation despite the gender of the victim renders the remedies 'transformative,' at least in the minimal sense of challenging prevailing conceptions about what it means to have rights.⁴⁰ The underlying idea, therefore, would be to measure harm with regard not to what victims had prior to the violation but to what they ought to have had under fair conditions. Creative combinations, such as small lump-sum payments for all victims plus monthly pensions and/or services, targeted at those who are worst off, could achieve the desired balance between recognizing victims' common humanity and shared citizenship and prioritizing among the most harmed for the purpose of material redress.

Finally, there is the possibility of embracing rehabilitation or reintegration as the primary goal of material reparation. This option would speak in favor of privileging services and social benefits (education, training, healthcare and housing assistance) over payments. Because women, when asked, often frame their reparations claims in terms of the services they and their children need and because reparations discussions usually take place in situations characterized by both great resource scarcity and huge development and reconstruction challenges, the idea that the emphasis should be on services rather than payments is a tempting one. It is attractive because rehabilitation and reintegration are future-oriented concepts inspired by a vision of a flourishing and successful life that women often never had before. In addition, because women are disproportionately burdened with taking care of the sick, disabled or elderly, the lack of reparations benefits in the form of services for amputated, mutilated, wounded or otherwise disabled or dependent persons may in fact mean that women are overburdened with unpaid work.

⁴⁰ Indeed, designing a compensation scheme that perpetuates unequal rights or opportunities for women would be a rather poor way of recognizing women's common humanity and equal citizenship status.

That said, there may be some risks in assuming that the best way to feminize material compensation is through services. For one thing, the notion of rehabilitation privileged by a given reparations scheme may not account for what it takes for women, as opposed to men, to regain the possibility of a fully functional life. Given unequal starting points, even within the same category of services, such as education and skills training, women and men are unlikely to be served well by the same program. By the same token, men's traditional relative independence from family (i.e., their status is less dependent on marriage or the possibility of bearing children, they remarry more easily than women and they are fundamentally not the primary caretakers of children or the elderly) is reflected in the services provided by a reparations program unless it is designed in a manner sensitive to the special needs of women.

In addition, a reparations program based only on the provision of basic services in the end distributes goods so primary that they are thought to be owed to all citizens and not just to victims. The risk is that all other citizens are excluded from these services, communities become divided and beneficiaries, particularly women, become subject to strong forms of pressure, as was the case in Rwanda.⁴¹ Finally, the argument that feminizing reparations means turning material redress into services conveys the symbolic message that the best women can aspire to is being passive recipients of assistance measures rather than active citizens who require recognition and compensation for the fact that their rights have been violated.

Here, too, the answer may lie in complex schemes that distribute some monetary awards and some rehabilitation services, preferably services that go beyond those owed to all citizens. Creative thinking is necessary about ways or modalities of distribution of both services and payments that actually reach women. A combination of small pensions with medical services and educational opportunities has proven fairly successful in Chile. Other modalities, such as shares in microfinance institutions, could simultaneously trigger transformation and enhance women's economic agency.⁴²

Gender and Symbolic Reparation: Recognition and Transformation

Perhaps, because a good number of reparations programs of late have been proposed by truth commissions (which have broader mandates and goals than typical judicial bodies), the programs are becoming less compensation mechanisms and more complex schemes that include symbolic measures. Individual symbolic

⁴¹ See, Heidy Rombouts, 'Women and Reparations in Rwanda: A Long Path to Travel,' in Rubio-Marín, *supra* n 7.

⁴² On reparations and microfinance see, Hans Dieter Seibel and Andrea Armstrong, 'Reparations and Microfinance Schemes,' in de Greiff, *supra* n 1. On gender, reparations and microfinance, see, Anita Bernstein, 'Tort Theory, Microfinance and Gender Equality Convergent in Pecuniary Reparations,' in Rubio-Marín, *supra* n 26.

measures that have met with some success in different contexts include individualized letters of apology signed by the highest authority in government, each victim receiving a copy of a truth commission report and support for families who want to give a proper burial to their loved ones.⁴³ Collective symbolic measures have included renaming public spaces, constructing museums and memorials, converting places of detention and torture into sites of memory, establishing days of commemoration and engaging in public acts of atonement.

As with other reparations measures, symbolic benefits are, at least in part, geared toward fostering recognition. In contrast to other kinds of benefits, symbolic measures derive their great potential from being carriers of meaning that may help victims in particular and society in general make sense of the painful events of the past.⁴⁴ An important insight about why symbolic measures usually turn out to be so significant is that in making the memory of victims a public matter, they disburden the family members of victims (and especially women) from their sense of obligation to keep the memory of those who perished alive, thus allowing them to move on. Moreover, some women may not avail themselves of other forms of reparation, including material compensation, unless programs include measures that allow reparations to have the proper meaning. Symbolic gestures, as well as disclosure of the fate of loved ones or assistance in finding the remains of loved ones and giving them proper burial, might be necessary for many widows, sisters and daughters to feel that they are not betraying or selling out their relatives if they accept material compensation. That symbolic measures can make a crucial difference in how compensation is perceived is exemplified by the case of the 'comfort women,' who to this day refuse material reparations unless they are accompanied by an official apology and official recognition of state responsibility.⁴⁵ The trend in favor of including symbolic measures in reparations programs also deserves to be encouraged because it makes reparations programs more sensitive to women's needs.

Little research has been done on whether there are forms of apology or of representation and memorialization that women, or some groups of women, might prefer over those traditionally favored by men.⁴⁶ Elsewhere, we argue that the symbolic ways in which the male and the female are represented in memorials and monuments must be equally empowering to both and that this may require

⁴³ The Chilean TRC sent the two-volume edition of its report to the family of every victim it had identified. The reparations program for Japanese-American interned during World War II included a personalized letter from the United States president to each victim (along with a \$20,000 check).

⁴⁴ See for example, Brandon Hamber, 'Narrowing the Macro and the Micro: A Psychological Perspective on Reparations in Societies in Transition,' in de Greiff, supra n 1.

⁴⁵ See, Gay J. McDougall, *Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict, Update to final report submitted by Ms. Gay McDougall*, UN Doc. E/CN.4/Sub.2/2000/21 (6 June 2000). On the comfort women see for example, Yoshiaki Yoshimi, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (New York: Columbia University Press, 2002); Margaret Stetz and Bonnies C. Oh, ed., *Legacies of Comfort Women During World War II* (New York: ME Sharpe, 2001).

⁴⁶ On this topic, see, Brandon Hamber and Ingrid Palmay, 'Gender, Memorialization and Symbolic Reparations,' in Rubio-Marín, supra n 26.

affirmation and transformation at the same time.⁴⁷ Victims must be able to recognize their experiences (even if the experiences and their interpretation of the experiences are inevitably gendered), but symbolic measures also must contribute to transforming a gendered system that constrains women. They must provide alternative ways of looking at both the past and the future. To do this, monuments and public spaces that represent the horror of the past must recognize the manifold forms of female agency. In many scenarios, this would mean that monuments or commemorative spaces show that women suffered, as freedom fighters or simply as civilians in addition to as wives and mothers, and, where appropriate, that women were both victims and perpetrators.

Symbolic measures cannot carry the whole weight of a complicated transition and should be thought of as one type of benefit among many. The participation of civil society in the design and implementation of symbolic reparations is perhaps more significant than with any other measure because of their semantic and representational function. From the perspective of gender justice, women must be given proper voice in such participatory processes.

Gender and Collective Reparations

Recently, the notion that reparations benefits can be distributed to collectivities has garnered interest and support. Indeed, both the *Basic Principles*⁴⁸ and the *Updated Principles to Combat Impunity*⁴⁹ endorse this idea. The underlying rationale seems to be that when collectivities have been the targets of violence, it makes sense to compensate them as collectivities. As neither document spells out what collective reparations means, this is a topic that requires a great deal of work, starting with the most elementary clarifications.

The term ‘collective reparations’ is ambiguous. ‘Collective’ is used to qualify the ‘reparations,’ or the types of goods distributed and the mode of distributing them, as well as to qualify the ‘subject’ who receives them, namely collectivities, such as legal subjects or ethnic or racial groups. An apology addressed to victims in general is a collective reparations measure to the extent that it represents a non-individualized modality of distribution. The construction of a school or a hospital undertaken in the name of reparations and for an ethnic group that has been the specific target of violence constitutes a collective reparation mechanism both because its subject is collective and because the good distributed is a public good from which, arguably, everyone benefits.⁵⁰

⁴⁷ See, Rubio-Marín, *supra* n 26.

⁴⁸ ‘In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.’ *Basic Principles*, *supra* n 2 at 6. Also, as seen, the definition of victim refers to persons individually or collectively harmed.

⁴⁹ ‘Reparations may also be provided through programs, based upon legislative or administrative measures, funded by national or international sources, addressed to individuals and to communities.’ *Updated Principles*, *supra* n 2 at 32.

⁵⁰ The Inter-American Court of Human Rights, for example, in the *Aloeboetoe* case, ordered the government of Suriname to construct a school as one of its reparations obligations for the attack

Although theorists and practitioners have shown an increasing interest in exploring collective forms of reparation, virtually no discussion has occurred on how this interest and that of 'engendering' reparations may intersect. Because the notion of collective reparations is used to refer to such a variety of things, it is unlikely that there will be a single answer to the question of what bringing gender justice into the design of collective reparations measures entails. A few examples show, however, that each of the meanings commonly given to the term can be discussed from a gendered perspective.

For instance, it has been argued that most families of victims experience a need for individualization in symbolic reparations.⁵¹ If this is true, women's reported predisposition to focus on the pain of their loved ones first and foremost⁵² encourages measures that enhance the symbolic recognition of their own individual suffering. Personalized official letters of apology and home-sent copies of a truth commission's report or its findings about a victim may be a meaningful addition to or substitute for a general official apology to victims when seen from a gender justice perspective. At the same time, public gestures of individualized recognition that expose women may not be appropriate, at least until it is ascertained that such exposure does not lead to further victimization. This may be best exemplified by the case of victims of sexual violence.

Public goods as non-excludable goods in the form of reparations benefits also may offer some specific advantages for women, at least when given as a complement to, rather than a substitute for, other forms of reparations. Beyond harming individuals and families, violence typically disrupts entire communities, and in a way that is likely to have a differential impact on men and women. Additionally, in situations of deep scarcity, individual reparations may be socially divisive, which means that women, who are less used to holding financial assets in their control, may become easy prey to family and communal violence and undue appropriation. Other things being equal then, a reparations program that includes both individual and collective reparations is likely to be more sensitive to the needs of women than one that limits itself to individual reparations, especially if women are included in the process of deciding which collective reparations measures to implement. At the same time, programs that only or even mostly distribute collective basic and public goods run the risk of being perceived as not a form of reparations at all and of having minimal reparative capacity. First, such benefits do not target victims specifically. Second, they can be said to constitute pre-existing responsibilities of the state – development, reconstruction or provision of basic social services – that are unrelated to the duty to compensate victims of human rights violations.

on 20 members of the Saramaka tribe. See, *Aloeboetoe et al. v. Suriname*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of 10 September 1993, Inter-Am. Ct. H.R. (Ser. C) No. 15 (1993). Some reparations programs also include material collective reparations measures – among them, the programs proposed by the truth commissions in Peru and Morocco.

⁵¹ See, Hamber, *supra* n 44.

⁵² See for example, Goldblatt, *supra* n 28.

A form of collective harm different from harm to public goods is group-based harm that is a result of group-based violence. This is violence linked to belonging to certain groups or collectivities along the lines of gender, sexual orientation, race, ethnicity, religious beliefs and so on. Group membership might be connected to either the reason for violence or the form of expression of violence. In the case of genocidal violence, people are persecuted because of their ethnicity and the violence can contribute to shaping ethnic identities and social perceptions thereof. Gender-specific forms of violence may happen to women because they are women in times of conflict and repression. Collective reparations in this sense need to redress the harm to the identity and social status of targeted individuals as well as the diffuse ensuing harms to the entire group.⁵³

Group-based measures are intended to make a contribution to reshaping social meanings, allowing present and future members of targeted groups to preserve their identity, status, culture and sense of self-worth and reducing the chances of exposure to ongoing widespread societal discrimination and violence.⁵⁴ They could be linked to guarantees of non-repetition or another modality or reparation, and they could include measures such as sensitization campaigns about violence against women or women's human rights, training of security forces on these matters, vetting of public forces that engaged in or were responsible for the worst forms of gender violence and, more broadly speaking, reforms of the legal system that remove traces of discrimination against women. Clearly, it is not only for victims of certain human rights violations (or for commissions or courts claiming to defend victims' rights) to define or implement structural or institutional reforms that will shape not only victims but also the entire society. Still, giving victims a qualified voice in the process of defining measures of non-recurrence and reparations can modestly enhance the inclusiveness of the democratic process.

Concluding Observations

In this article, we have tried to make clear what it would take both procedurally and substantively to engender some of the fundamental choices that must be made in the design and implementation of reparations programs. These choices fundamentally have to do with the conceptualization of victims, beneficiaries and benefits. We argue that a gender perspective contributes both to the practice of reparations by making programs more sensitive to gender factors and, it is our hope, to theoretical debates about gender. It helps us move from the more abstract affirmation that gender 'makes a difference' to providing a concrete illustration of the differences it actually makes.

⁵³ Guatemala's national reparations program includes, for instance, cultural reparations measures that seek to promote the revitalization of the cultures affected by the internal armed conflict, mainly the Mayan culture. See, Paz y Paz Bailey, *supra* n 17.

⁵⁴ This general argument is explored in detail in Rubio-Marín, *supra* n 13.